

STATE OF SOUTH CAROLINA
BEFORE THE PUBLIC SERVICE COMMISSION
DOCKET NO. 2018-318-E

IN THE MATTER OF:)	
)	SOUTH CAROLINA ENERGY
Application Duke Energy Progress, LLC)	USERS COMMITTEE
For Adjustments in Electric Rate Schedules)	PETITION FOR REHEARING
and Tariffs)	OR RECONSIDERATION
)	

The South Carolina Energy Users Committee (“SCEUC”), Intervenor in the above referenced proceeding, hereby petitions the South Carolina Public Service Commission (“Commission”) for rehearing or reconsideration of Order No. 2019-341, dated May 21, 2019, granting Duke Energy Progress, LLC (“Duke Progress or DEP”) an increase in its electric rate schedules and charges. SCEUC petitions the Commission pursuant to S.C. Code Ann. §58-27-2150 (1976) and S.C. Code Ann. Reg. 103-854 to reconsider certain of its findings and conclusions with respect to the Commission’s decision to raise Duke Progress’s rates. For the reasons hereinafter set out, SCEUC would respectfully submit that the Commission committed the following errors of fact and law.

COAL ASH COST RECOVERY AT H.R. ROBINSON

1) Duke Progress’ total cost to ratepayers for excavating its H.R. Robinson coal ash pond is expected to be \$180 million, of which Duke Progress sought to recover \$11.5 million from ratepayers in this docket. (Wittliff direct p. 45, Table 5.4). H.R. Robinson’s coal ash pond was located contiguous to the electric generating plant.

- 2) Duke Progress' acted to justify its excavation of its coal ash pond by consent agreement voluntarily entered into with the South Carolina Division of Health and Environmental Control (DHEC). See Consent Agreement 15-23-HW. DHEC has no authority to set rates and acts without regard to the interests of Duke Progress' ratepayers.
- 3) It is undisputed that the H.R. Robinson coal ash pond was not subject to regulation by either the Environmental Protection Agency's Coal Combustion Residual rule ("CCR") or the North Carolina Coal Ash Management Act or CAMA.
- 4) Consent Agreement 15-23-HW reflects that Duke Progress was in compliance with its permit of the existing coal ash pond. The Findings of Fact in the consent agreement reveal no violations of DHEC regulations. There is no record of seeps or spills. There is no record of surface water or ground water contamination. Consent Agreement 15-23-HW at p. 2.
- 5) The Commission overlooked and misapprehended the testimony of Office of Regulatory Staff ("ORS") witness Willie J. Morgan. ORS witness Morgan testified that he was employed by DHEC for 19 years as Permitting Liaison where he assisted industries with environmental permitting requirements and his duties required knowledge of permitting information about solid and hazardous waste management. (Morgan prefiled direct at p. 1, 17 – p. 2, l. 1). ORS witness Morgan explained the regulatory process for the solid waste facility at Robinson. Mr. Morgan explained the structural fill inspection process in general and the June 9, 2015 inspection at Robinson in particular. As demonstrated by the DHEC Structural Fill Inspection Form (See Hearing Exhibit 70, a copy of which is attached), the Robinson coal ash pond in all respects met or exceeded DHEC regulatory requirements and was operated in a manner to protect groundwater and

surface water quality. ORS witness Morgan explained that had the H.R. Robinson coal ash pond failed inspection resulting in a violation of its permit, DHEC had the authority to order Duke Progress to address the violation and to fine the utility for any violation (Tr. p. 1327, l. 18 – p. 1342, l. 4)

6) The Commission overlooked and misapprehended the fact that the H.R. Robinson coal ash pond was located contiguous to the H.R. Robinson electric generating unit and exempted from the requirement to be excavated and hauled to a Class 3 landfill pursuant to S.C. Code Ann. Section 58-27-255(A)(1). The Commission overlooked and misapprehended that S.C. Code Ann. Section 58-27-255(A)(1) compels the finding and conclusion that it was unnecessary to excavate the coal ash pond.

7) In addition, the Commission overlooked and misapprehended the fact that because the H.R. Robinson coal ash pond met DHEC standards and was owned and operated by the utility that produced the electricity which resulted in the coal ash by product, DHEC had no authority to order Duke to remediate the coal ash pond. that S.C. Code Ann. Section 58-27-255(A)(4) .

8) The Commission overlooked and misapprehended the fact that to take advantage of Duke Progress' offer to excavate the coal ash pond, DHEC was forced to act by agreement, negotiated at arm's length. Consent Agreement 15-23-HW was the result of a negotiated process whereby the regulator was forced to agree to covenant not to sue. (Consent Agreement 15-23-HW at p. 10). Had DHEC been acting pursuant to its statutory authority to close the coal ash pond, a covenant not to sue would have been unnecessary. See S.C. Code Ann. § 44-96-450. In addition, because DHEC was not acting under its regulatory authority, DHEC was forced to include language in the consent order granting it authority

to inspect the remediation performed at the site. Had DHEC been acting pursuant to its regulatory authority, it would have been able to rely upon S.C. Code Ann. § 44-96-260 (4) for authority to enter upon the coal ash pond and inspect for compliance with State law. Instead, DHEC was forced to rely upon common law contractual concepts to accomplish the goal of closing the coal ash pond.

9) The Commission is charged with assessing the impact of a DHEC order on a utility's ratepayers and this Commission has exercised its authority to protect ratepayers from excessive measures imposed by DHEC. See Order No. 2004-203 in Docket No. 2003-218-S. Here, the Commission overlooked and misapprehended the fact that the existence of a DHEC consent agreement does not justify, much less compel a decision by the Commission to require Duke Progress' ratepayers to pay for the unnecessary excavation of the H.R. Robinson coal ash pond.

10) The Commission overlooked and misapprehended the fact that the only reasonable inference from the record is that it was totally unnecessary to excavate the H.R. Robinson coal ash pond, and that in closing the H.R. Robinson coal ash pond, Duke Progress behaved imprudently. Forcing Duke Progress' ratepayers to pay \$180 million for this unnecessary expense is incomprehensible to ratepayers.

11) The Petitioner respectfully requests that the Commission reconsider its order in this regard and deny Duke Progress recovery of the cost of excavating the H.R. Robinson coal ash basin.¹

¹ SCEUC concurs with the Commission order which protects South Carolina ratepayers by disallowing \$333,480,308 in CAMA-only costs.

REAL TIME PRICING

12) The Commission overlooked and misapprehended the fact that because Duke Progress prices its real time pricing (“RTP”) rates at its own marginal costs, manufacturers are paying higher costs than necessary. There are times when Duke Progress’ marginal cost of power offered to its manufacturing customers is greater than the price Duke Progress could pay for that same power in the open wholesale market. In addition, when Duke Progress fails to take advantage of lower cost power on the wholesale market, it is also needlessly running its higher cost generating plants adding to higher fuel costs paid by all consumers. (O’Donnell prefled direct at p. 44, ll. 17-29 – p.45, ll. 1-2).

13) The Commission overlooked and misapprehended the significant impact Duke Progress’ RTP rates have on Duke Progress’ manufacturing customers. (O’Donnell prefled direct p. 46, ll. 5-12, filed as Confidential).

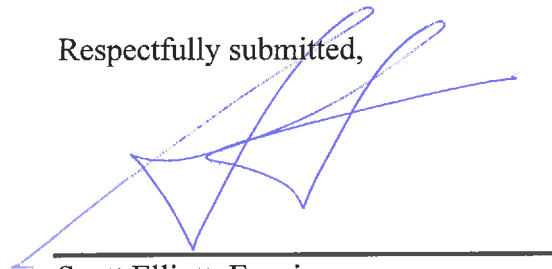
14) The Commission overlooked and misapprehended that RTP costs designed to create a competitive manufacturing marketplace in South Carolina as recommended by SCEUC witness O’Donnell are just and reasonable.

15) The Commission should act to require Duke Progress to provide real time pricing rates at the lowest cost practicable without prejudicing Duke Progress ratepayers and shareholders by fixing RTP rates which are competitive in the market and reduce the costs to manufacturers.

CONCLUSION

For the foregoing reasons, as well as those set out at trial and in its post trial brief to the Commission submitted May 1, 2019, the South Carolina Energy Users Committee respectfully requests that the Commission rehear those issues set out above, reconsider Order No. 2019-341 respecting those issues and issue its order consistent with the arguments set out above.

Respectfully submitted,



Scott Elliott, Esquire
ELLIOTT & ELLIOTT, P.A.
1508 Lady Street
Columbia, SC 29201
(803) 771-0555

*Attorney for the South Carolina
Energy Users Committee*

Columbia, South Carolina
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